

“(d) The period of one year specified in section 102(b) of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before August 5, 1940, and patents granted on such applications, and with respect to such applications and patents, said period is two years instead of one year.

“(e) Nothing contained in Title 35, as enacted by section 1 hereof, shall operate to nullify any judicial finding prior to the effective date of this Act on the validity of any patent by a court of competent jurisdiction.

“(f) Nothing in Title 35, as enacted by section 1 hereof, shall affect any provision of the Atomic Energy Act of 1946 (Aug. 1, 1946, ch. 724, 60 Stat. 755) [§2011 et seq. of Title 42, The Public Health and Welfare].

“(g) The period of one year specified in section 4 of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before the effective date of this Act.

“(h) The repeal of sections 1–9, 11, 12 of the Act of Congress approved February 1, 1952 (ch. 4, 66 Stat. 3) [sections 151 to 159 of former Title 35], shall not affect any rights or liabilities existing on the date of approval of this Act [July 19, 1952]. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant to the provisions of this Act [this title].”

#### REPEALS

Section 5 of act July 19, 1952, ch. 950, 66 Stat. 815, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large codified in this Act with the proviso that “Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.”

### PART I—UNITED STATES PATENT AND TRADEMARK OFFICE

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1.	<b>Establishment, Officers and Employees, Functions .....</b>	<b>1</b>
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#### AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13206(a)(4), Nov. 2, 2002, 116 Stat. 1904, substituted “Before” for “before” in chapter 3 heading.

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(a)(2), (3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582, substituted “UNITED STATES PATENT AND TRADEMARK OFFICE” for “PATENT AND TRADEMARK OFFICE” in part heading and “Establishment, Officers and Employees, Functions” for “Establishment, Officers, Functions” in chapter 1 heading.

1991—Pub. L. 102–204, §5(d)(2)(D), Dec. 10, 1991, 105 Stat. 1640, substituted “before” for “Before the” in chapter 3 heading and inserted “; Funding; Search Systems” after “Fees” in chapter 4 heading.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “PATENT AND TRADEMARK OFFICE” for “PATENT OFFICE” in part heading and in headings for chapters 2 and 3.

### CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

Sec.	
1.	Establishment.
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5.	Patent and Trademark Office Public Advisory Committees.
6.	Board of Patent Appeals and Interferences.
7.	Library.
8.	Classification of patents.
9.	Certified copies of records.
10.	Publications.
11.	Exchange of copies of patents and applications with foreign countries.
12.	Copies of patents and applications for public libraries.
13.	Annual report to Congress.
14.	Renumbered 13.]

#### AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13205(2)(D), Nov. 2, 2002, 116 Stat. 1903, made technical correction to directory language of Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4507(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–566. See 1999 Amendment note below.

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(a)(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582, amended analysis generally, substituting “OFFICERS AND EMPLOYEES” for “OFFICERS” in chapter heading, substituting “Powers and duties” for “Seal” in item 2, adding item 5, renumbering items 7 to 14 as 6 to 13, respectively, striking out former item 6, “Duties of Commissioner”, and inserting “and applications” after “patents” in items 11 and 12.

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4507(4), 4508], Nov. 29, 1999, 113 Stat. 1536, 1501A–566, as amended by Pub. L. 107–273, div. C, title III, §13205(2)(D), Nov. 2, 2002, 116 Stat. 1903, which directed the insertion of “and applications” after “patents” in items 11 and 12, effective 1 year after Nov. 29, 1999, was not executed in either item to reflect the probable intent of Congress. See above.

1984—Pub. L. 98–622, title II, §201(b), Nov. 8, 1984, 98 Stat. 3386, substituted “Patent Appeals and Interferences” for “Appeals” in item 7.

1972—Pub. L. 92–310, title II, §208(b), June 6, 1972, 86 Stat. 203, struck out item 5 “Bond of Commissioner and other officers”.

#### § 1. Establishment

(a) **ESTABLISHMENT.**—The United States Patent and Trademark Office is established as an agency of the United States, within the Department of Commerce. In carrying out its functions, the United States Patent and Trademark Office shall be subject to the policy direction of the Secretary of Commerce, but otherwise shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions in accordance with this title and applicable provisions of law. Those operations designed to grant and issue patents and those operations which are designed to facilitate the registration of trademarks shall be treated as separate operating units within the Office.

(b) **OFFICES.**—The United States Patent and Trademark Office shall maintain its principal office in the metropolitan Washington, D.C., area, for the service of process and papers and for the purpose of carrying out its functions. The United States Patent and Trademark Office shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which

its principal office is located, except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Office may establish satellite offices in such other places in the United States as it considers necessary and appropriate in the conduct of its business.

(c) REFERENCE.—For purposes of this title, the United States Patent and Trademark Office shall also be referred to as the “Office” and the “Patent and Trademark Office”.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4711], Nov. 29, 1999, 113 Stat. 1536, 1501A-572.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 1 (R.S. 475 and Executive Order 4175, Mar. 17, 1925).

The word “all” is omitted from the corresponding section of the existing statute and “except as otherwise provided by law” added, since some old records are kept in the National Archives, see 44 U.S.C., 1946 ed., ch. 8A.

The word “models” has been omitted to remove emphasis on models since they are no longer generally required. They are included by the word “things.”

The phrase “and to trade-mark registrations” is added. There is no enactment corresponding to this section in the trade-mark law. The original chapter of the Revised Statutes containing this section deals with the Patent Office as such in its administration of trade-marks as well as patents. This is explicitly brought out in some of the corresponding sections of the present chapter. Changes in language are made.

#### AMENDMENTS

1999—Pub. L. 106-113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The Patent and Trademark Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.”

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### CHANGE OF NAME

Section 3 of Pub. L. 93-596 provided that: “The terms ‘Patent Office’ and ‘Commissioner of Patents’ in all laws of the United States shall mean ‘Patent and Trademark Office’ and ‘Commissioner of Patents and Trademarks’, respectively.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle G, § 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-581, provided that: “This subtitle [see Tables for classification] and the amendments made by this subtitle shall take effect 4 months after the date of the enactment of this Act [Nov. 29, 1999].”

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-453, § 1, Dec. 10, 2004, 118 Stat. 3596, provided that: “This Act [amending section 103 of this title and enacting provisions set out as a note under section 103 of this title] may be cited as the ‘Cooperative Research and Technology Enhancement (CREATE) Act of 2004’.”

#### SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title III, § 13201, Nov. 2, 2002, 116 Stat. 1901, provided that: “This subtitle [subtitle B

(§§ 13201-13211) of title III of div. C of Pub. L. 107-273, see Tables for classification] may be cited as the ‘Intellectual Property and High Technology Technical Amendments Act of 2002’.”

#### SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [§ 1(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-521, provided that: “This Act [S. 1948, as enacted by section 1000(a)(9) of Pub. L. 106-113, see Tables for classification] may be cited as the ‘Intellectual Property and Communications Omnibus Reform Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4001], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that: “This title [see Tables for classification] may be cited as the ‘American Inventors Protection Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle A, § 4101], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that: “This subtitle [enacting section 297 of this title and provisions set out as a note under section 297 of this title] may be cited as the ‘Inventors’ Rights Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle B, § 4201], Nov. 29, 1999, 113 Stat. 1536, 1501A-554, provided that: “This subtitle [amending sections 41 and 42 of this title and enacting provisions set out as notes under section 41 of this title and section 1113 of Title 15, Commerce and Trade] may be cited as the ‘Patent and Trademark Fee Fairness Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle C, § 4301], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, provided that: “This subtitle [enacting section 273 of this title and provisions set out as a note under section 273 of this title] may be cited as the ‘First Inventor Defense Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle D, § 4401], Nov. 29, 1999, 113 Stat. 1536, 1501A-557, provided that: “This subtitle [amending sections 132, 154, 156, and 282 of this title and section 1295 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 132 and 154 of this title] may be cited as the ‘Patent Term Guarantee Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle E, § 4501], Nov. 29, 1999, 113 Stat. 1536, 1501A-561, provided that: “This subtitle [amending sections 11 to 13, 102, 119, 120, 122, 135, 154, 181, 252, 284, and 374 of this title and enacting provisions set out as notes under sections 11, 41, and 122 of this title] may be cited as the ‘Domestic Publication of Foreign Filed Patent Applications Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle F, § 4601], Nov. 29, 1999, 113 Stat. 1536, 1501A-567, provided that: “This subtitle [enacting chapter 31 of this title, amending sections 41, 100, 134, 141, 143, and 145 of this title, and enacting provisions set out as notes under sections 41, 311, and 315 of this title] may be cited as the ‘Optional Inter Partes Reexamination Procedure Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle G, § 4701], Nov. 29, 1999, 113 Stat. 1536, 1501A-572, provided that: “This subtitle [see Tables for classification] may be cited as the ‘Patent and Trademark Office Efficiency Act’.”

#### SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105-358, § 1, Nov. 10, 1998, 112 Stat. 3272, provided that: “This Act [amending sections 41 and 42 of this title and enacting provisions set out as a note under section 41 of this title] may be cited as the ‘United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999’.”

Pub. L. 105-289, § 1, Oct. 27, 1998, 112 Stat. 2780, provided that: “This Act [amending section 163 of this title and enacting provisions set out as notes under sections 41 and 163 of this title] may be cited as the ‘Plant Patent Amendments Act of 1998’.”

#### SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-418, § 9001, Aug. 23, 1988, 102 Stat. 1563, provided that: “This subtitle [subtitle A (§§ 9001-9007) of

title IX of Pub. L. 100-418, enacting section 295 of this title, amending sections 154, 271, and 287 of this title, and enacting provisions set out as notes under section 271 of this title] may be cited as the ‘Process Patent Amendments Act of 1988’.”

Pub. L. 100-418, title IX, §9101(a), Aug. 23, 1988, 102 Stat. 1567, provided that: “This section [amending sections 184 to 186 of this title and enacting provisions set out as notes under section 184 of this title] may be cited as the ‘Patent Law Foreign Filing Amendments Act of 1988’.”

#### SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-622, §1, Nov. 8, 1984, 98 Stat. 3383, provided that: “This Act [enacting section 157 of this title, amending sections 3, 7, 41, 103, 104, 116, 120, 134, 135, 141, 145, 146, 271, 305, 351, 361, 362, 365 to 368, 371 to 373, and 376 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 7, 41, 103, 157, and 351 of this title] may be cited as the ‘Patent Law Amendments Act of 1984’.”

#### TRANSFER OF FUNCTIONS AND ASSETS OF PATENT AND TRADEMARK OFFICE

Pub. L. 106-113, div. B, §1000(a)(9) [title IV, subtitle G, chapter 3], Nov. 29, 1999, 113 Stat. 1536, 1501A-585, provided that:

##### “SEC. 4741. REFERENCES.

“(a) IN GENERAL.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department or office from which a function is transferred by this subtitle [see Tables for classification]—

“(1) to the head of such department or office is deemed to refer to the head of the department or office to which such function is transferred; or

“(2) to such department or office is deemed to refer to the department or office to which such function is transferred.

“(b) SPECIFIC REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Patent and Trademark Office—

“(1) to the Commissioner of Patents and Trademarks is deemed to refer to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office;

“(2) to the Assistant Commissioner for Patents is deemed to refer to the Commissioner for Patents; or

“(3) to the Assistant Commissioner for Trademarks is deemed to refer to the Commissioner for Trademarks.

##### “SEC. 4742. EXERCISE OF AUTHORITIES.

“Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this subtitle.

##### “SEC. 4743. SAVINGS PROVISIONS.

“(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

“(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this subtitle, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this subtitle; and

“(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

“(b) PROCEEDINGS.—This subtitle shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle [see Effective Date of 1999 Amendment note above] before an office transferred by this subtitle, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this subtitle had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

“(c) SUITS.—This subtitle shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subtitle had not been enacted.

“(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this subtitle, shall abate by reason of the enactment of this subtitle.

“(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this subtitle such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

“(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this subtitle, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this subtitle.

##### “SEC. 4744. TRANSFER OF ASSETS.

“Except as otherwise provided in this subtitle, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this subtitle shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

##### “SEC. 4745. DELEGATION AND ASSIGNMENT.

“Except as otherwise expressly prohibited by law or otherwise provided in this subtitle, an official to whom functions are transferred under this subtitle (including the head of any office to which functions are transferred under this subtitle) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this subtitle shall relieve the official to whom a function is transferred under this subtitle of responsibility for the administration of the function.

“SEC. 4746. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.

“(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this subtitle.

“(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this subtitle, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subtitle. The Director shall provide for the termination of the affairs of all entities terminated by this subtitle and for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

“SEC. 4747. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

“For purposes of this subtitle, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

“SEC. 4748. AVAILABILITY OF EXISTING FUNDS.

“Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this subtitle shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in Public Law 105-277 [112 Stat. 2681-111].

“SEC. 4749. DEFINITIONS.

“For purposes of this subtitle—

“(1) the term ‘function’ includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

“(2) the term ‘office’ includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.”

FEDERAL AGENCY STATUS FOR PATENT AND TRADEMARK OFFICE

Pub. L. 101-508, title X, §10102, Nov. 5, 1990, 104 Stat. 1388-392, provided that: “For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)] and the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.].”

**§ 2. Powers and duties**

(a) IN GENERAL.—The United States Patent and Trademark Office, subject to the policy direction of the Secretary of Commerce—

(1) shall be responsible for the granting and issuing of patents and the registration of trademarks; and

(2) shall be responsible for disseminating to the public information with respect to patents and trademarks.

(b) SPECIFIC POWERS.—The Office—

(1) shall adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

(2) may establish regulations, not inconsistent with law, which—

(A) shall govern the conduct of proceedings in the Office;

(B) shall be made in accordance with section 553 of title 5;

(C) shall facilitate and expedite the processing of patent applications, particularly those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;

(D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office;

(E) shall recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1) of this title; and

(F) provide for the development of a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness;

(3) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

(4)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of subtitle I and chapter 33 of title 40, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

(5) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

(6) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, instrumentality, Patent and Trademark Office, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign patent and trademark office or international organization to perform functions on its behalf;

(7) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office;

(8) shall advise the President, through the Secretary of Commerce, on national and certain international intellectual property policy issues;

(9) shall advise Federal departments and agencies on matters of intellectual property policy in the United States and intellectual property protection in other countries;

(10) shall provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection;

(11) may conduct programs, studies, or exchanges of items or services regarding domestic and international intellectual property law and the effectiveness of intellectual property protection domestically and throughout the world;

(12)(A) shall advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) may conduct programs and studies described in subparagraph (A); and

(13)(A) in coordination with the Department of State, may conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and other matters.

(c) **CLARIFICATION OF SPECIFIC POWERS.**—(1) The special payments under subsection (b)(13)(B) shall be in addition to any other payments or contributions to international organizations described in subsection (b)(13)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(2) Nothing in subsection (b) shall derogate from the duties of the Secretary of State or from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

(3) Nothing in subsection (b) shall derogate from the duties and functions of the Register of

Copyrights or otherwise alter current authorities relating to copyright matters.

(4) In exercising the Director's powers under paragraphs (3) and (4)(A) of subsection (b), the Director shall consult with the Administrator of General Services.

(5) In exercising the Director's powers and duties under this section, the Director shall consult with the Register of Copyrights on all copyright and related matters.

(d) **CONSTRUCTION.**—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4712], Nov. 29, 1999, 113 Stat. 1536, 1501A-572; Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107-273, div. C, title III, § 13206(a)(1), Nov. 2, 2002, 116 Stat. 1904; Pub. L. 108-178, § 4(g), Dec. 15, 2003, 117 Stat. 2641.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 3 (R.S. 478).  
 "Certificates of trade-mark registrations" is added, see note under section 1. Changes in language are made and the specific date eliminated.

#### REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(4)(A), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(4)(A), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

#### AMENDMENTS

2003—Subsec. (b)(4)(A). Pub. L. 108-178 substituted "subtitle I and chapter 33 of title 40, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)," for "the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Public Buildings Act (40 U.S.C. 601 et seq.)."

2002—Subsec. (b)(2)(B), (4)(B). Pub. L. 107-273 struck out "United States Code" before semicolon at end.

2000—Subsec. (b)(4)(A). Pub. L. 106-400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

1999—Pub. L. 106-113 amended section catchline and text generally. Prior to amendment, text read as follows: "The Patent and Trademark Office shall have a seal with which letters patent, certificates of trademark registrations, and papers issued from the Office shall be authenticated."

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731]

of Pub. L. 106-113, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS

Pub. L. 107-273, div. C, title III, § 13103, Nov. 2, 2002, 116 Stat. 1899, provided that:

“(a) ELECTRONIC FILING AND PROCESSING.—The Director [of the Patent and Trademark Office] shall, beginning not later than 90 days after the date of enactment of this Act [Nov. 2, 2002], and during the 3-year period thereafter, develop an electronic system for the filing and processing of patent and trademark applications, that—

“(1) is user friendly; and

“(2) includes the necessary infrastructure—

“(A) to allow examiners and applicants to send all communications electronically; and

“(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

“(b) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized under section 13102 [set out as a note under section 42 of this title], there is authorized to be appropriated to carry out subsection (a) of this section not more than \$50,000,000 for each of fiscal years 2003, 2004, and 2005. Amounts made available pursuant to this subsection shall remain available until expended.”

### § 3. Officers and employees

(a) UNDER SECRETARY AND DIRECTOR.—

(1) IN GENERAL.—The powers and duties of the United States Patent and Trademark Office shall be vested in an Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this title referred to as the “Director”), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who has a professional background and experience in patent or trademark law.

(2) DUTIES.—

(A) IN GENERAL.—The Director shall be responsible for providing policy direction and management supervision for the Office and for the issuance of patents and the registration of trademarks. The Director shall perform these duties in a fair, impartial, and equitable manner.

(B) CONSULTING WITH THE PUBLIC ADVISORY COMMITTEES.—The Director shall consult with the Patent Public Advisory Committee established in section 5 on a regular basis on matters relating to the patent operations of the Office, shall consult with the Trademark Public Advisory Committee established in section 5 on a regular basis on matters relating to the trademark operations of the Office, and shall consult with the respective Public Advisory Committee before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations which are subject to the requirement to provide notice and opportunity for public comment under section 553 of title 5, as the case may be.

(3) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Office.

(4) REMOVAL.—The Director may be removed from office by the President. The President shall provide notification of any such removal to both Houses of Congress.

(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

(1) DEPUTY UNDER SECRETARY AND DEPUTY DIRECTOR.—The Secretary of Commerce, upon nomination by the Director, shall appoint a Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director. The Deputy Director shall be a citizen of the United States who has a professional background and experience in patent or trademark law.

(2) COMMISSIONERS.—

(A) APPOINTMENT AND DUTIES.—The Secretary of Commerce shall appoint a Commissioner for Patents and a Commissioner for Trademarks, without regard to chapter 33, 51, or 53 of title 5. The Commissioner for Patents shall be a citizen of the United States with demonstrated management ability and professional background and experience in patent law and serve for a term of 5 years. The Commissioner for Trademarks shall be a citizen of the United States with demonstrated management ability and professional background and experience in trademark law and serve for a term of 5 years. The Commissioner for Patents and the Commissioner for Trademarks shall serve as the chief operating officers for the operations of the Office relating to patents and trademarks, respectively, and shall be responsible for the management and direction of all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively. The Secretary may reappoint a Commissioner to subsequent terms of 5 years as long as the performance of the Commissioner as set forth in the performance agreement in subparagraph (B) is satisfactory.

(B) SALARY AND PERFORMANCE AGREEMENT.—The Commissioners shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service established under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of title 5. The compensation of the Commissioners shall be considered, for purposes of section 207(c)(2)(A) of title 18, to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of title 18. In addition, the Commissioners may receive a bonus in an amount of up to, but not in excess of, 50 percent of the Commissioners' annual rate of basic pay, based upon an evaluation by the Secretary of Commerce, acting through the Director, of the Commissioners' performance as defined in an annual performance agreement between the Commissioners and the

Secretary. The annual performance agreements shall incorporate measurable organization and individual goals in key operational areas as delineated in an annual performance plan agreed to by the Commissioners and the Secretary. Payment of a bonus under this subparagraph may be made to the Commissioners only to the extent that such payment does not cause the Commissioners' total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the Vice President under section 104 of title 3.

(C) REMOVAL.—The Commissioners may be removed from office by the Secretary for misconduct or nonsatisfactory performance under the performance agreement described in subparagraph (B), without regard to the provisions of title 5. The Secretary shall provide notification of any such removal to both Houses of Congress.

(3) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

(A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and

(B) define the title, authority, and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.

(4) TRAINING OF EXAMINERS.—The Office shall submit to the Congress a proposal to provide an incentive program to retain as employees patent and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent and trademark examiners.

(5) NATIONAL SECURITY POSITIONS.—The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances, in order to maintain the secrecy of certain inventions, as described in section 181, and to prevent disclosure of sensitive and strategic information in the interest of national security.

(c) CONTINUED APPLICABILITY OF TITLE 5.—Officers and employees of the Office shall be subject to the provisions of title 5, relating to Federal employees.

(d) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Efficiency Act, with respect to such Office (as then in effect).

(e) CARRYOVER OF PERSONNEL.—

(1) FROM PTO.—Effective as of the effective date of the Patent and Trademark Office Efficiency Act, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers

and employees of the Office, without a break in service.

(2) OTHER PERSONNEL.—Any individual who, on the day before the effective date of the Patent and Trademark Office Efficiency Act, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Office, as necessary to carry out the purposes of this Act,<sup>1</sup> if—

(A) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

(B) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent's work time, as determined by the Secretary of Commerce; or

(C) such transfer would be in the interest of the Office, as determined by the Secretary of Commerce in consultation with the Director.

Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

(f) TRANSITION PROVISIONS.—

(1) INTERIM APPOINTMENT OF DIRECTOR.—On or after the effective date of the Patent and Trademark Office Efficiency Act, the President shall appoint an individual to serve as the Director until the date on which a Director qualifies under subsection (a). The President shall not make more than one such appointment under this subsection.

(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—(A) The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Efficiency Act may serve as the Commissioner for Patents until the date on which a Commissioner for Patents is appointed under subsection (b).

(B) The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Efficiency Act may serve as the Commissioner for Trademarks until the date on which a Commissioner for Trademarks is appointed under subsection (b).

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 85-933, § 1, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, § 1(a), Sept. 23, 1959, 73 Stat. 650; Pub. L. 88-426, title III, § 305(26), Aug. 14, 1964, 78 Stat. 425; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, § 1, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 97-247, § 4, Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-366, § 4, Oct. 25, 1982, 96 Stat. 1760; Pub. L. 98-622, title IV, § 405, Nov. 8, 1984, 98 Stat. 3392; Pub. L. 105-304, title IV, § 401(a)(1), Oct. 28, 1998, 112 Stat. 2887; Pub. L. 106-44, § 2(c), Aug. 5, 1999, 113 Stat. 223; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4713], Nov. 29, 1999, 113 Stat. 1536, 1501A-575; Pub. L. 107-273, div. C, title III, § 13206(a)(2), Nov. 2, 2002, 116 Stat. 1904.)

<sup>1</sup> So in original.

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 2 (R.S. 476, amended (1) Feb. 15, 1916, ch. 22, § 1, 39 Stat. 8, (2) Feb. 14, 1927, ch. 139, § 1, 44 Stat. 1098, (3) Apr. 11, 1930, ch. 132, § 1, 46 Stat. 155).

The temporary designation of the assistant commissioner as Commissioner in case of a vacancy in office is added. This will eliminate complications since present applicable general statutes (5 U.S.C., 1946 ed., § 7) permit a vacancy to be temporarily filled only for not more than 30 days.

Changes in language are made. "Assistant commissioners" is used in the second sentence (and elsewhere in the bill) as referring to all three assistants.

This entire title is subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263) which vests all functions of the Patent Office in the Secretary of Commerce and authorizes delegation by him. It has been found impractical to so word the various sections of the title, and a general provision has been inserted as the second paragraph of this section of the bill, leaving the wording of various sections of the title in terms of officers previously specified and to whom the functions presently stand delegated.

## REFERENCES IN TEXT

For the effective date of the Patent and Trademark Office Efficiency Act, referred to in subsecs. (d) to (f), as 4 months after Nov. 29, 1999, see section 1009(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

## AMENDMENTS

2002—Subsec. (a)(2)(B). Pub. L. 107-273, § 13206(a)(2)(A), struck out "United States Code," after "title 5."

Subsec. (b)(2)(A). Pub. L. 107-273, § 13206(a)(2)(B)(i), struck out "United States Code" after "title 5".

Subsec. (b)(2)(B). Pub. L. 107-273, § 13206(a)(2)(B)(ii)-(iv), in first sentence, struck out "United States Code," after "section 5382 of title 5," and "United States Code" after "section 5304(h)(2)(C) of title 5", in second sentence, struck out "United States Code," after "for purposes of section 207(c)(2)(A) of title 18," and "United States Code" after "clause (ii) of section 207(c)(2)(A) of title 18", and in last sentence, struck out "United States Code" after "title 3".

Subsec. (b)(2)(C). Pub. L. 107-273, § 13206(a)(2)(B)(v), struck out "United States Code" after "title 5".

Subsec. (c). Pub. L. 107-273, § 13206(a)(2)(C), in heading, struck out "United States Code" before period at end, and in text, struck out "United States Code," after "title 5".

1999—Pub. L. 106-113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

"(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two Assistant Commissioners, and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

"(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

"(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each ex-

aminer-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.

"(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code.

"(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5."

Subsec. (d). Pub. L. 106-44 struck out "United States Code" after "title 5".

1998—Subsec. (d). Pub. L. 105-304 substituted "in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code" for "prescribed by law for Assistant Secretaries of Commerce".

1984—Subsec. (e). Pub. L. 98-622 added subsec. (e).

1982—Subsec. (a). Pub. L. 97-247 struck out "not more than fifteen" after "two Assistant Commissioners, and", and inserted "appointed under section 7 of this title" after "examiners-in-chief".

Subsec. (d). Pub. L. 97-366 added subsec. (d).

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office", and "Commissioner of Patents and Trademarks" for "Commissioner of Patents", wherever appearing.

Subsec. (a). Pub. L. 93-601 designated first par. as subsec. (a), redesignated first assistant commissioner as a Deputy Commissioner, granted authority for appointment of not more than fifteen examiners-in-chief to Secretary of Commerce instead of the President, and struck out provision relating to performance by assistant commissioners of duties assigned by Commissioner.

Subsecs. (b), (c). Pub. L. 93-601 designated second and third pars. as subsecs. (b) and (c), respectively.

1964—Pub. L. 88-426 repealed provisions which prescribed annual rate of compensation of Commissioner.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of examiners-in-chief.

1958—Pub. L. 85-933 increased number of examiners-in-chief from nine to not more than fifteen and specified annual compensation of Commissioner.

## EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98-622 provided that: "The amendments made by sections 401, 402, and 405 of this Act [amending this section and sections 361, 366, 371, 372, and 376 of this title] shall take effect six months after the date of the enactment of this Act [Nov. 8, 1984]."

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

## EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4(b) of Pub. L. 93-601 provided that: "This Act [amending this section and sections 7 and 151 of this title and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments."

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

## EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964,



except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Section 7(b) of Pub. L. 86-370 provided that: "Sections 1 [amending this section, section 7 of this title, and provisions set out as a note below], 3 [amending sections 2205 and 2208 of former Title 5, Executive Departments and Government Officers and Employees], and 6 [amending section 1082 of former Title 5 and section 903 of Title 20, Education] of this Act shall become effective on the first day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959]." Such section 7(b) was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 660.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Section 1(c) of Pub. L. 86-370 provided that: "The amendments made by this section [amending sections 1 and 7 of this title] shall not affect—

"(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

"(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments."

#### § 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 4 (R.S. 480).

The language is revised and inability to apply for a patent, included in the original language, is made explicit.

The period of disability is increased to include one year after leaving the Office.

The further restriction, that no priority date earlier than one year after leaving the Office can be claimed, is added.

The one year period is made inapplicable to applications which may be pending when the revised title goes into effect by section 4(g) of the bill.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### § 5. Patent and Trademark Office Public Advisory Committees

(a) ESTABLISHMENT OF PUBLIC ADVISORY COMMITTEES.—

(1) APPOINTMENT.—The United States Patent and Trademark Office shall have a Patent Public Advisory Committee and a Trademark Public Advisory Committee, each of which shall have nine voting members who shall be appointed by the Secretary of Commerce and serve at the pleasure of the Secretary of Commerce. Members of each Public Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed, three shall be appointed for a term of 1 year, and three shall be appointed for a term of 2 years. In making appointments to each Committee, the Secretary of Commerce shall consider the risk of loss of competitive advantage in international commerce or other harm to United States companies as a result of such appointments.

(2) CHAIR.—The Secretary shall designate a chair of each Advisory Committee, whose term as chair shall be for 3 years.

(3) TIMING OF APPOINTMENTS.—Initial appointments to each Advisory Committee shall be made within 3 months after the effective date of the Patent and Trademark Office Efficiency Act. Vacancies shall be filled within 3 months after they occur.

(b) BASIS FOR APPOINTMENTS.—Members of each Advisory Committee—

(1) shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee;

(2) shall include members who represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants, but in no case shall members who represent small entity patent applicants, including small business concerns, independent inventors, and non-profit organizations, constitute less than 25 percent of the members of the Patent Public Advisory Committee, and such members shall include at least one independent inventor; and

(3) shall include individuals with substantial background and achievement in finance, management, labor relations, science, technology, and office automation.

In addition to the voting members, each Advisory Committee shall include a representative of each labor organization recognized by the United States Patent and Trademark Office. Such representatives shall be nonvoting members of the Advisory Committee to which they are appointed.

(c) MEETINGS.—Each Advisory Committee shall meet at the call of the chair to consider an agenda set by the chair.

(d) DUTIES.—Each Advisory Committee shall—

(1) review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to Trademarks, in the case of the Trademark Public Advisory Committee, and advise the Director on these matters;

(2) within 60 days after the end of each fiscal year—

(A) prepare an annual report on the matters referred to in paragraph (1);

(B) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

(C) publish the report in the Official Gazette of the United States Patent and Trademark Office.

(e) COMPENSATION.—Each member of each Advisory Committee shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of that Advisory Committee or otherwise engaged in the business of that Advisory Committee, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5. While away from such member's home or regular place of business such member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(f) ACCESS TO INFORMATION.—Members of each Advisory Committee shall be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.

(g) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of each Advisory Committee shall be special Government employees within the meaning of section 202 of title 18.

(h) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to each Advisory Committee.

(i) OPEN MEETINGS.—The meetings of each Advisory Committee shall be open to the public, except that each Advisory Committee may by majority vote meet in executive session when considering personnel, privileged, or other confidential information.

(j) INAPPLICABILITY OF PATENT PROHIBITION.—Section 4 shall not apply to voting members of the Advisory Committees.

(Added Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4714], Nov. 29, 1999, 113 Stat. 1536, 1501A–578; amended Pub. L. 107–273, div. C, title III, §§13203(b), 13206(a)(3), Nov. 2, 2002, 116 Stat. 1902, 1904.)

#### REFERENCES IN TEXT

For the effective date of the Patent and Trademark Office Efficiency Act, referred to in subsec. (a)(3), as 4 months after Nov. 29, 1999, see section 1009(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### PRIOR PROVISIONS

A prior section 5, act July 19, 1952, ch. 950, 66 Stat. 793, related to bond of Commissioner and other officers, prior to repeal by Pub. L. 92–310, title II, §208(a), June 6, 1972, 86 Stat. 203.

#### AMENDMENTS

2002—Subsec. (e). Pub. L. 107–273, §13206(a)(3), struck out “, United States Code” after “title 5” in two places.

Subsec. (g). Pub. L. 107–273, §13206(a)(3), struck out “, United States Code” after “title 18”.

Subsec. (i). Pub. L. 107–273, §13203(b)(1), inserted “, privileged,” after “personnel”.

Subsec. (j). Pub. L. 107–273, §13203(b)(2), added subsec. (j).

#### EFFECTIVE DATE

Section effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

### § 6. Board of Patent Appeals and Interferences

(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent and Trademark Office a Board of Patent Appeals and Interferences. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary of Commerce, in consultation with the Director.

(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a). Each appeal and interference shall be heard by at least three members of the Board, who shall be designated by the Director. Only the Board of Patent Appeals and Interferences may grant rehearings.

(c) AUTHORITY OF THE SECRETARY.—The Secretary of Commerce may, in his or her discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge.

(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge's having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.

(Added Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4717(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–580; amended Pub. L. 107–273, div. C, title III, §13203(a)(2), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 110–313, §1(a)(1), Aug. 12, 2008, 122 Stat. 3014.)

## REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c), is the date of enactment of Pub. L. 110-313, which was approved Aug. 12, 2008.

## PRIOR PROVISIONS

A prior section 6, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 92-132, Oct. 5, 1971, 85 Stat. 364; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, §2, Nov. 14, 1975, 89 Stat. 690; Pub. L. 97-247, §§7, 13, Aug. 27, 1982, 96 Stat. 320, 321; Pub. L. 102-204, §8, Dec. 10, 1991, 105 Stat. 1641, related to duties of Commissioner, prior to repeal by Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4715(a), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581, effective 4 months after Nov. 29, 1999.

## AMENDMENTS

2008—Subsec. (a). Pub. L. 110-313, §1(a)(1)(A), (B), substituted “Deputy Director” for “Deputy Commissioner” in second sentence and “Secretary of Commerce, in consultation with the Director” for “Director” in last sentence.

Subsecs. (c), (d). Pub. L. 110-313, §1(a)(1)(C), which directed addition of subsecs. (c) and (d) at end of subsec. (a), was executed by adding subsecs. (c) and (d) at end of section to reflect the probable intent of Congress.

2002—Subsec. (a). Pub. L. 107-273, which directed amendment of subsec. (a) by inserting “the Deputy Commissioner,” after “Commissioner,” was executed by making the insertion after “The Director,” to reflect the probable intent of Congress.

## EFFECTIVE DATE

Section effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

**§ 7. Library**

The Director shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

(July 19, 1952, ch. 950, 66 Stat. 793, §8; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; renumbered §7 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §10 (R.S. 486).

Some change in language has been made. “Purchased” is changed to “maintained” to include the existing library and keeping it up by additions. The phrase “and other” is added to include legal works. The last phrase of the corresponding section of the existing statute is omitted as unnecessary.

## PRIOR PROVISIONS

A prior section 7, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 85-933, §2, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, §1(b), Sept. 23, 1959, 73 Stat. 650; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, §2, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 98-622, title II, §201(a), Nov. 8, 1984, 98 Stat. 3386, established the Board of Patent Appeals and Interferences, prior to repeal by Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581, effective 4 months after Nov. 29, 1999.

## AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], renumbered section 8 of this title as this section.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

## EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

**§ 8. Classification of patents**

The Director may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

(July 19, 1952, ch. 950, 66 Stat. 794, §9; renumbered §8 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §6 note (June 10, 1898, ch. 430, §1, 30 Stat. 440).

Changes in language are made.

## PRIOR PROVISIONS

A prior section 8 was renumbered section 7 of this title.

## AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], renumbered section 9 of this title as this section.

## EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

**§ 9. Certified copies of records**

The Director may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefor.

(July 19, 1952, ch. 950, 66 Stat. 794, §10; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; renumbered §9 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §14 (Mar. 3, 1891, ch. 541, §1 (part), 26 Stat. 908, 940).

Reference to other records is added. The fee for certification is omitted as it appears in the table of fees.

#### PRIOR PROVISIONS

A prior section 9 was renumbered section 8 of this title.

#### AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], renumbered section 10 of this title as this section.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

### § 10. Publications

(a) The Director may publish in printed, type-written, or electronic form, the following:

1. Patents and published applications for patents, including specifications and drawings, together with copies of the same. The Patent and Trademark Office may print the headings of the drawings for patents for the purpose of photolithography.

2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent and Trademark Office.

4. Annual indexes of patents and patentees, and of trade-marks and registrants.

5. Annual volumes of decisions in patent and trade-mark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Director may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 794, §11; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; renumbered §10 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4507(1), 4717(1), 4732(a)(10)(A), 4804(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-565, 1501A-580, 1501A-582, 1501A-589; Pub. L. 107-273, div. C, title III, §§13205(2)(A), 13206(b)(1)(B), (3)(A), Nov. 2, 2002, 116 Stat. 1903, 1906.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§13 and 16 (R.S. 489; July 9, 1947, ch. 211, §301 (part), 61 Stat. 299, repeated in prior and subsequent appropriation acts).

Section is amplified to list the publications of the Patent Office, based on 44 U.S.C., 1946 ed., §§283, 283a.

The second sentence of item 1 of the revised section is a provision appearing annually in appropriation acts to enable the Patent Office to maintain a small printing press to place headings on drawings before the drawings are reproduced.

Language is changed.

#### PRIOR PROVISIONS

A prior section 10 was renumbered section 9 of this title.

#### AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273, §13206(b)(3)(A), amended directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4804(b)]. See 1999 Amendment note below.

Subsec. (a)1. Pub. L. 107-273, §13205(2)(A), made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4507(1)]. See 1999 Amendment note below.

Subsec. (b). Pub. L. 107-273, §13206(b)(1)(B), made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], renumbered section 11 of this title as this section.

Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4804(b)], as amended by Pub. L. 107-273, §13206(b)(3)(A), which directed the general amendment of the introductory provisions of subsec. (a) of section 10 of this title to read “The Director may publish in printed, type-written, or electronic form, the following:”, was executed to this section, which was section 11 of this title, to reflect the probable intent of Congress. This section was subsequently renumbered section 10 of this title by Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)]. Prior to amendment, introductory provisions of subsec. (a) read as follows: “The Commissioner may print, or cause to be printed, the following:”. See note above and Effective Date of 1999 Amendment note below.

Subsec. (a)1. Pub. L. 106-113, §1000(a)(9) [title IV, §4507(1)], as amended by Pub. L. 107-273, §13205(2)(A), inserted “and published applications for patents” after “Patents”.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, §13206(b)(1)(B), substituted “Director” for “Commissioner”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”, wherever appearing.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4508], Nov. 29, 1999, 113 Stat. 1536, 1501A-566, as amended by Pub. L. 107-273, div. C, title III, §13205(3), Nov. 2, 2002, 116 Stat. 1903, provided that: “Except as otherwise provided in this section, sections 4502 through 4504 and 4506 through 4507 [amending sections 10 to 12, 119, 120, 122, 135, 154, 181, 252, 284, and 374 of this title and enacting provisions set out as notes under sections 41 and 122 of this title], and the amendments made by such sections, shall be effective as of November 29, 2000, and shall apply only to applications (including international applications designating the United States) filed on or after that date. The amendments made by section 4504 [amending section 154 of this title] shall additionally apply to any pending application filed before November 29, 2000, if such pending application is published pursuant to a request of the applicant under such procedures as may be established by the Director. Except as otherwise provided in this section, the amendments made by section 4505 [amending section 102 of this title] shall be effective as of November 29, 2000 and shall apply to all patents and all applications for patents pending on or filed after November 29, 2000. Patents resulting from an international application filed before November 29, 2000 and applications published pursuant to section 122(b) [probably means section 122(b) of title 35] or Article 21(2) of the treaty defined in section 351(a) [probably

means section 351(a) of title 35] resulting from an international application filed before November 29, 2000 shall not be effective as prior art as of the filing date of the international application; however, such patents shall be effective as prior art in accordance with section 102(e) in effect on November 28, 2000.”

Amendment by section 1000(a)(9) [title IV, §§ 4717(1), 4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

### § 11. Exchange of copies of patents and applications with foreign countries

The Director may exchange copies of specifications and drawings of United States patents and published applications for patents for those of foreign countries. The Director shall not enter into an agreement to provide such copies of specifications and drawings of United States patents and applications to a foreign country, other than a NAFTA country or a WTO member country, without the express authorization of the Secretary of Commerce. For purposes of this section, the terms “NAFTA country” and “WTO member country” have the meanings given those terms in section 104(b).

(July 19, 1952, ch. 950, 66 Stat. 794, § 12; renumbered § 11 and amended Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4507(2), 4717(1), 4732(a)(10)(A), 4808], Nov. 29, 1999, 113 Stat. 1536, 1501A-565, 1501A-580, 1501A-582, 1501A-591; Pub. L. 107-273, div. C, title III, §§ 13205(2)(B), 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1903, 1906.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 15, and 78, part (Jan. 14, 1915, 38 Stat. 1221; Feb. 18, 1922, ch. 58, § 9, proviso in, 42 Stat. 393).

The first act mentioned applies to Canada only, the second to any country; these are consolidated in one section, specific reference to one country not being necessary.

Language is changed.

#### PRIOR PROVISIONS

A prior section 11 was renumbered section 10 of this title.

#### AMENDMENTS

2002—Pub. L. 107-273, § 13206(b)(1)(B), made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

Pub. L. 107-273, § 13205(2)(B), made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4507(2)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4808], inserted at end “The Director shall not enter into an agreement to provide such copies of specifications and drawings of United States patents and applications to a foreign country, other than a NAFTA country or a WTO member country, without the express authorization of the Secretary of Commerce. For purposes of this section, the terms ‘NAFTA country’ and ‘WTO member country’ have the meanings given those terms in section 104(b).”

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, § 13206(b)(1)(B), substituted “Director” for “Commissioner”.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4717(1)], renumbered section 12 of this title as this section.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4507(2)], as amended by Pub. L. 107-273, § 13205(2)(B), inserted “and applications” after “patents” in section catchline and “and published applications for patents” after “patents” in text.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4507(2)] of Pub. L. 106-113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000(a)(9) [title IV, § 4508] of Pub. L. 106-113, as amended, set out as a note under section 10 of this title.

Amendment by section 1000(a)(9) [title IV, §§ 4717(1), 4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

### § 12. Copies of patents and applications for public libraries

The Director may supply copies of specifications and drawings of patents and published applications for patents in printed or electronic form to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year’s issue established for this purpose in section 41(d) of this title.

(July 19, 1952, ch. 950, 66 Stat. 794, § 13; Pub. L. 97-247, § 15, Aug. 27, 1982, 96 Stat. 321; renumbered § 12 and amended Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4507(3), 4717(1), 4732(a)(10)(A), 4804(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-565, 1501A-580, 1501A-582, 1501A-589; Pub. L. 107-273, div. C, title III, §§ 13205(2)(C), 13206(b)(1)(B), (3)(B), Nov. 2, 2002, 116 Stat. 1903, 1906.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 78, part (R.S. 4934, Feb. 18, 1922, ch. 58, § 9, 42 Stat. 389, 393, amended June 15, 1950, ch. 249, 64 Stat. 215).

The proviso in the schedule of fees of the existing statute is made a separate section and some changes in language are made.

#### PRIOR PROVISIONS

A prior section 12 was renumbered section 11 of this title.

#### AMENDMENTS

2002—Pub. L. 107-273, § 13206(b)(3)(B), amended directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4804(c)]. See 1999 Amendment note below.

Pub. L. 107-273, § 13206(b)(1)(B), made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

Pub. L. 107-273, § 13205(2)(C), made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4507(3)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4804(c)], as amended by Pub. L. 107-273, § 13206(b)(3)(B), which directed amendment of section 12 of this title by substituting “copies of specifications and drawings of patents in printed or electronic form” for “printed copies of specifications and drawings of patents”, was executed to this section, which was section 13 of this title, to reflect the probable intent of Congress. This section was subsequently renumbered section 12 of this title by Pub. L. 106-113, § 1000(a)(9) [title IV, § 4717(1)]. See note

above and Effective Date of 1999 Amendment note below.

Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, §13206(b)(1)(B), substituted “Director” for “Commissioner”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], renumbered section 13 of this title as this section.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(3)], as amended by Pub. L. 107-273, §13205(2)(C), inserted “and applications” after “patents” in section catchline and “and published applications for patents” after “patents” in text.

1982—Pub. L. 97-247 substituted “section 41(d)” for “section 41(a)(9)”.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4507(3)] of Pub. L. 106-113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106-113, as amended, set out as a note under section 10 of this title.

Amendment by section 1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

### § 13. Annual report to Congress

The Director shall report to the Congress, not later than 180 days after the end of each fiscal year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, the nature of training provided to examiners, the evaluation of the Commissioner of Patents and the Commissioner of Trademarks by the Secretary of Commerce, the compensation of the Commissioners, and other information relating to the Office.

(July 19, 1952, ch. 950, 66 Stat. 794, §14; renumbered §13 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4718], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §20 (R.S. 494). Language is changed. The lists referred to in the corresponding section of existing statute, and which are omitted from the revised section, are the indexes provided for in section 11(a)(4). The month of reporting is omitted. The report contemplated by R.S. 494 has been discontinued since 1925 under authority of 44 U.S.C., 1946 ed., §212.

#### PRIOR PROVISIONS

A prior section 13 was renumbered section 12 of this title.

#### AMENDMENTS

1999—Pub. L. 106-113 renumbered section 14 of this title as this section and amended section catchline and text generally. Prior to amendment, text read as follows: “The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731]

of Pub. L. 106-113, set out as a note under section 1 of this title.

#### REPORT TO CONGRESS

Pub. L. 100-703, title I, §103(c), Nov. 19, 1988, 102 Stat. 4674, provided that: “The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

“(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

“(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

“(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

“(4) any proposed disposition of surplus fees by the Office; and

“(5) such other information as the committees consider necessary.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, §3(c), Nov. 6, 1986, 100 Stat. 3471.

#### COMPUTERIZED DATA AND RETRIEVAL SYSTEM; REPORT TO CONGRESS

Pub. L. 96-517, §9, Dec. 12, 1980, 94 Stat. 3028, directed the Commissioner of Patents and Trademarks to report to Congress, within two years after Dec. 12, 1980, a plan to identify, and if necessary develop or have developed, computerized data and retrieval systems equivalent to the latest state of the art which could be applied to all aspects of the operation of the Patent and Trademark Office, and particularly to the patent search file, the patent classification system, and the trademark search file. The report was to specify the cost of implementing the plan, and how rapidly the plan could be implemented by the Patent and Trademark Office, without regard to the availability of future funding.

### § 14. Renumbered § 13]

## CHAPTER 2—PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

#### Sec.

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|-----|---|
| 21. | Filing date and day for taking action.          |
| 22. | Printing of papers filed.                       |
| 23. | Testimony in Patent and Trademark Office cases. |
| 24. | Subpoenas, witnesses.                           |
| 25. | Declaration in lieu of oath.                    |
| 26. | Effect of defective execution.                  |

#### AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, §13206(a)(5), Nov. 2, 2002, 116 Stat. 1904, substituted “Filing date and day for taking action” for “Day for taking action falling on Saturday, Sunday, or holiday” in item 21.

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in chapter heading and in item 23.

1964—Pub. L. 88-292, §2, Mar. 26, 1964, 78 Stat. 171, added items 25 and 26.

### § 21. Filing date and day for taking action

(a) The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director.